

# CALIFORNIA ACUPUNCTURE BOARD

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State of California  
Department of Consumer Affairs  
Arnold Schwarzenegger, Governor



(approved 2/24/04)

## ACUPUNCTURE BOARD MEETING MINUTES December 8-9, 2003 City Council Room, Arcadia, CA 91007

### Full Board December 8, 2003

#### **MEMBERS OF THE BOARD**

Pei Li Zhong-Fong, L.Ac., Chair  
Shari Asplund, Vice-Chair  
Michael Eng  
Joan C. Chang, L.Ac.  
Min M. Chang  
Justin Tin

#### **STAFF PRESENT**

Marilyn Nielsen, Executive Officer  
Don Chang, Legal Counsel  
Janelle Wedge, Administrative Coordinator  
Nancy Molinar, Education Coordinator  
Helen Gathercole, Administrative Technician

#### **MEMBERS ABSENT**

NONE

#### **GUEST LIST ON FILE**

#### **1. Call to Order and Establishment of a Quorum (P.Zhong-Fong, Chair)**

Chair Pei Li Zhong-Fong called the Acupuncture Strategic Planning Session to order at approximately 9 a.m. Roll was taken, a quorum was established.

#### **2. Strategic Planning Session – Facilitator Travis McCann**

#### **3. Adjournment**

Acupuncture Board Strategic Planning Session adjourned at approximately 5 p.m.

### Full Board December 9, 2003

#### **1. Call to Order and Establishment of a Quorum (P.Zhong-Fong, Chair)**

Chair Pei Li Zhong-Fong called the Acupuncture Board meeting to order at approximately 8:55 a.m. Roll Was taken, a quorum was established.

#### **2. Chair's Report – Pei Li Zhong-Fong**

Ms. Zhong-Fong reported the Board has reached its many goals this year. She stated she, Ms. Nielsen and Vice-Chair Ms. Asplund attended the Little Hoover Advisory Committee meeting that was held in Sacramento October 22, 2003. The Little Hoover Commission (LHC) is conducting a comprehensive analysis on the scope of practice of an acupuncturist, educational requirements, evaluation of the national examination, and the school approval process. LHC will be reporting their findings and recommendations to the Joint Legislative Sunset Review Committee by September 1, 2004. Four Board committees were established to evaluate each of these issues and make recommendations to the members regarding the position the Board should take on each, which will be relayed to the LHC for consideration. Pursuant to Business & Professional Code Section 4934.2 two committees are still reviewing the

acupuncture assistant and continuing education issues. Ms. Zhong-Fong took the opportunity to thank the staff and Board members for their diligent accomplishments this year, even with the California staff reduction order. She also congratulated Janelle Wedge for her 30 years of dedication and commitment serving the public and State of California. Ms. Wedge was presented with a plaque of recognition and commemorative brass clock for her 30 years of State service. She was personally thanked for her loyalty and dedication to the Board, and presented a gift as a token of the Board's appreciation as well.

### **3. Executive Officer's Report – Marilyn Nielsen**

Ms. Nielsen reported the move to the new location went well and she complimented Ms. Wedge and Ms. Gathercole for their work getting this project completed. She also indicated the Board's website had expanded to allow complaint online filing and staff will continue to evaluate the website components to improve accessibility to the consumer and acupuncturists. Ms. Wedge expressed her thanks and appreciation for her recognition.

### **4. Approval of September 23, 2003 Meeting Minutes**

**MICHAEL ENG MOVED AND MIN CHANG SECONDED THE  
MOTION TO APPROVE THE SEPTEMBER 23, 2003 MINUTES  
AS AMENDED.  
PASSED UNANIMOUSLY**

### **5. Administrative Business – (Discussion/Action)**

#### **a. Proposed Regulatory Amendment to Title 16, California Code of Regulations**

**(previously noticed in California Regulatory Notice Register #Z-03-0570-10, publications date of May 30, 2003) Amending Sections 1399.415, 1399.416 and 1399.436, and Adding Sections 1399.434 and 1399.435.**

#### **1. Governor Schwarzenegger's Executive Order S-2-03, Pending Regulatory Actions**

Don Chang, Legal Counsel, reported Governor Schwarzenegger issued Executive Order S-2-03 November 17, 2003, to all agencies requiring a reassessment of the legal validity of pending or recently adopted regulations and their economic impact on business in the State of California. All agencies are required to file three different regulatory reports within the next 90 days. Currently the Board has the curriculum regulations pending. Based on Executive Order S-2-03, the Board's regulatory package has been suspended for further review for a period not to exceed 180 days. Mr. Chang suggested that Ms. Nielsen prepare the required regulatory reports within the required time frame and file an exemption to continue the current curriculum regulations since the Board has statutory mandate to meet the deadline of January 1, 2005. In addition the Board is required to review any policies or standard applications that are not in regulations in 30 days.

#### **2. Department of Consumer Affairs Legal Affairs Office's, Guidelines and Standard of General Application of Executive Order S-2-03.**

Mr. Chang explained the Board's responsibility pursuant to the requirements of Executive Order S-2-03 Paragraphs Two (2) and Three (3), the Board will need to assess and identify any present issuance, utilization, enforcement or attempt at enforcement of any guideline, criterion, bulletin, manual, instruction, order, standard of general application which has not been adopted as a regulation in potential violation of California Code Section 11340.5 (a). This report is due to DCA Legal Division by December 12, 2003.

#### **3. Sections 1399.434 and 1399.435, 15-Day Notice on Modified Text and Comments Received.**

Tom Haines, Pacific College of Oriental Medicine, re-submitted his suggestions, modifications and comments for the proposed language that the Board did not adopt in his original comments. Mr. Chang directed the Board to amend, accept or reject the modifications and if adopted continue the process of preparing and releasing a 15-day notice.

**Public Comment:** Brian Fennen, CAOMA, Ron Zaidman, Five Branches Institute and Tom Haines, PCOM commented on the recommendations, modified languages and recommended adoption of the regulation language proposed for Section 1399.434 and 1399.435. Lixin Huang, ACTCM, stated that in regard to professional development, could specify and define a higher method of education, clinical practice and research.

**SHARI ASPLUND MOVED AND MICHAEL ENG SECONDED THE MOTION TO ADOPT THE RECOMMENDED AMENDMENTS, AND PER EXECUTIVE ORDER S-2-03 UPON CONCLUSION OF THE ADMINISTRATION'S 180-DAY REVIEW OF THE PENDING CURRICULUM REGULATIONS, AUTHORIZED THE EXECUTIVE OFFICER TO PROCEED WITH FILING ANOTHER 15-DAY NOTICE OF MODIFIED LANGUAGE AND FILE THE RULEMAKING PACKAGE WITH OFFICE OF ADMINISTRATIVE LAW IF NO NEGATIVE COMMENTS ARE RECEIVED DURING THE NOTICE PERIOD. ANY NEGATIVE COMMENTS RECEIVED WILL BE HELD TO DISCUSS AT A FUTURE BOARD MEETING.  
PASSED UNANIMOUSLY**

**b. Business and Professions Code Section 4934.1 – Little Hoover Commission's Study and Evaluation Requirements on the Scope of Practice and Educational Requirements of an Acupuncturist, School Approval Process and Use of National Exam.**

Ms. Nielsen reported the Chair Ms. Zhong-Fong; Vice-Chair Ms. Asplund and herself attended the last of Little Hoover Advisory Committee (LHC) meetings held on October 22, 2003. The contract with LHC is in effect and a panel has been formed by the University of California San Francisco (UCSF) with the following confirmed participants; Edward O'Neil, MPA, Ph.D., (Chair) Catherine Dower, Matthew Bauer, L.Ac., Howard Moffet, MPH, L.Ac., Steven Rosenblatt, MD. Ph.D., L.Ac., Barbara Safriet, Paul Shekeele, MD., Ph.D. and Pei-Li Zhong-Fong, L.Ac. The panel will meet January 21<sup>st</sup> and 22<sup>nd</sup> 2004 to review the scope of practice. After receiving and reviewing the agreement in October about UCSF's oversight of the analysis the Board raised some serious concern. Ms. Nielsen stated the Board composed a letter dated October 21, 2003 to Michael E. Alpert, Chair of LHC, stating their concerns for Ms. Dower's position on the NCCAOM, elevating a serious concern that a conflict of interest exists in her oversight and participation. A letter from James P. Mayer dated November 10, 2003 did not totally address the concerns of the Board. She suggested the Board go on record stating they still have concerns about the conflict of interest and believe the panel should be expanded and balanced with California practitioners representing the interests of California and not just with national interests.

**Public Comment:** An York Lee, California Alliance of Acupuncture Medicine (CAAM), stated that the general public expects a standard of neutrality from their elected officials in the decision making process, especially when the decisions have an implication on public health and safety. Mr. Lee addressed his concerns about the participation of Ms. Dower as a potential conflict of interest. He also recommended the LHC address this situation and replace Ms. Dower with a neutral panelist and to forward the umbrella panel report and individual issue reports to the Advisory Committee for review and comment before submission to the Joint Legislative Sunset Review Committee. Brian Fennen, CAOMA, represented CAOMA's concerns for the bias panel selected and believes the review would not be conducted objectively. He strongly disagrees with the selection of Ms. Dower as a panel member because of her relationship with NCCAOM. Mr. Fennen indicated the CAOMA would be drafting a formal letter of discontent. Tom Haines, PCOM, clarified that Matthew Bauer and Howard Moffet are not affiliated with the National Acupuncture & Oriental Medicine Alliance (NAOMA) and the process of the panel is to gather information given at the Advisory Committees. Dr. Haines indicated the Acupuncture Board's Chair is part of this panel, it gives a considerable voice in the process.

Mr. Eng indicated this is a serious allegation and a legitimate concern raised in regards to the LHC process. LHC was selected in a legislative process and their mission is to address issues not resolved by the legislature in normal legislation action. Mr. Eng stated the Board is paying LHC to work together through these difficult issues and the Board's opinion should be given consideration. Mr. Eng also stated there is a perception of conflict of interest that would harm the legitimacy of the results. LHC should be made aware of this and that he fully supported the points made in the letter to LHC dated October 21, 2003. Mr. Eng asked the Board to refer to the letter dated September 30, 2003 from James P. Mayer, Executive Director of LHC, wherein he even discloses Ms. Dower's conflict of interest in writing and acknowledges a real conflict of interest exists. This undermines the level of trust and faith in the LHC and UCSF review process. He felt Senators and Assembly members need to be made aware of this.

**Public Comment:** Neal Miller, L.Ac., supports and agrees with the Board and suggested Assemblywoman Judy Chu be notified of the Board's concerns.

**MICHAEL ENG MOVED AND JUSTIN TIN SECONDED THE MOTION FOR THE CALIFORNIA ACUPUNCTURE BOARD GO ON RECORD TO REQUIRE LITTLE HOOVER COMMISSION REMOVE "ANY" STAFF MEMBER WITH A REAL OR PERCEIVED CONFLICT OF INTEREST, WHICH LHC HAS ALSO PUBLICLY IDENTIFIED IN THE CONTRACT BETWEEN LHC AND THE UNIVERSITY OF CALIFORNIA SAN FRANCISCO (UCSF) (CONTRACT LHC-03-002, EXHIBIT A, PAGE 11). COPIES OF THIS WRITTEN PUBLIC REQUEST WILL ALSO BE SENT TO GOVERNOR SCHWARZENEGGER, THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND APPROPRIATE LEGISLATORS. PASSED UNANIMOUSLY**

**JOAN CHANG MOVED AND PEI LI ZHONG-FONG SECONDED THE MOTION TO REQUEST THE LITTLE HOOVER COMMISSION TO BALANCE THE UNIVERSITY OF CALIFORNIA SAN FRANCISCO'S ACUPUNCTURE SCOPE OF PRACTICE PANEL, TO BE HELD JANUARY 21-22, 2004 IN SAN FRANCISCO, WITH REPRESENTATIVES OF CALIFORNIA ACUPUNCTURE ASSOCIATIONS, AND REQUEST THAT PANELISTS ARE REQUIRED TO RELEASE FULL DISCLOSURE OF ALL EXPERIENCE AND AFFILIATED MEMBERSHIPS. PASSED UNANIMOUSLY**

**c. Business and Professions Code Section 4934.2 – Study and Evaluation Requirements of the Acupuncture Board:**

**1. Comprehensive Study of Unlicensed Acupuncture Assistants**

Ms. Zhong-Fong reported the Board established a committee to evaluate the data compiled from the May 2003 survey to all licensees regarding use of assistants. The results reflected 13 percent of acupuncturists reported use of one or more assistants and 27 percent said they may hire an assistant in the future. The committee will fully review the survey data and comments, review the standards that other professions and States use regarding assistants and bring a recommendation back to the Board. The Board further discussed the use as follows:

**a. Committee Report/Recommendation (Committee Members: P. Zhong-Fong & S.Asplund)**

Ms. Zhong-Fong indicated the committee has established there is a need to regulate acupuncture assistants. The Board must determine and clarify the responsibilities and training of the assistant and the responsibilities of the licensed acupuncturists employing an assistant. Ms. Asplund stated based on the response there is a need to regulate, not to license at this

time because the use is limited, and there were enough licensees who indicate they would use them in the future. If regulations existed, training available, and a process in place, more licensees might be compelled to use an assistant. Ms. Asplund indicated if the Board accepts the recommendations, the committee would move forward and create a focus group to answer LHC questions. Mr. Eng had concerns regarding the fiscal impact this would have on the staff and asked counsel what would be involved to regulate assistants. Mr. Chang stated to regulate, but not license means specify what the responsibilities are of an acupuncturist who uses acupuncture assistants. It is difficult to regulate someone when there is no specific clear authority.

**Public Comment:** Gary Schultz, SCUHS, indicated the use of assistants is probably higher than reported to the Board, because acupuncturist may be using assistants and not reporting it. Mr. Schultz suggests the Board may want to follow some of the guidelines regulating unlicensed individuals that the Chiropractic Board uses. The Chiropractic Board has created language charging the licensed chiropractor with the responsibility of ensuring the behavior of any unlicensed person within their office. Tom Haines, PCOM, concurs with Mr. Schultz, that it would be beneficial to protect the public and would be helpful to the profession. Dr. Haines recommends having a competencies, curriculum and certification program. Neal Miller indicated the Board could sponsor legislation to regulate. Marilyn Allen, American Acupuncture Council, stated she teaches clinical management in fourteen schools and tells her students, their practice is divided into two areas, technical and business. There are 125 tasks for their employees, which do not involve the medical side of the practice. Ms. Allen believes there could be a problem if the employee is assisting in the medical side of the profession and agrees there should be a taskforce to study and evaluate this issue. Mr. Chang, Legal Counsel indicated the Board needs to make a decision, this would require statutory obligation of the licensed acupuncturist or regulate a limited form of activity. Lixin Huang, ACTCM, states there should be a clarification between the technician and assistant. If people are employed at an acupuncture assistant level, the Board should consider if they want to take full responsibility and combined with the existing regulation under the licensed acupuncturist and colleges in their second year of training. Brian Fennen, CAOMA, indicated the Board could possibly use the registration system, this includes identifying the safety issues, which are legal issues in what they can and can not do. Mr. Fennen stated he understood this is a recommendation from the Joint Legislative Sunset Review Committee (JLSRC) and the Board is to make their recommendations. He believes the JLSRC would be responsible putting it into the legislation. Neal Miller concurred with the previous comments. Kuk-Yul Choi, AKAOMAC, stated he had concern for the patient and believes the patient would rather be take care of by the acupuncturist.

## **2. Continuing Education Auditing, Consistency and Relevancy of Approved Courses**

### **a. Committee Report/Recommendation (Committee Members: P.Zhong-Fong & J.Chang)**

Ms. Zhong-Fong reported the committee did not have enough time to meet to present the Board with a report at this time. At the strategic planning meeting on December 8, 2003 the Board did discuss reviewing and setting up guidelines for the staff as part of a quality and control.

### **b. Evaluate Licensee Continuing Education Survey Results**

Ms. Zhong-Fong indicated the Board would be scheduling a focus group in January 2004 to review provider guidelines, distance CE courses and the difficulty in quality control.

**Public Comment:** Dr. John Chen stated he is a pharmacist, herbalist, educator and writer in the field of herbology. Dr Chen recognizes the use of herbs interacting with pharmaceuticals and believes there is a gap in education and the danger in the combining of the two. Medical doctors are not trained in herbal medicine and visa versa, he believes that both sides should take the responsibility to learn. Dr. Chen indicated that patients are seeking alternative medical care now and it is very important that schools incorporate integrated medicine with their curriculum. Neal

Miller, L.Ac., encouraged the Board to be at the forefront in this issue, it is important to be proactive between the Acupuncture Board and Medical Board to resolve this problem.

**d. Budget Updates**

Ms. Nielsen reported the budget mid-year expenditure ratios are on track and reflecting the normal mid-year expenditure pattern. Governor Schwarzenegger has issued Executive Order S-3-03 implementing a hiring freeze and reduction on travel through June 2004.

**e. 2004/2005 BCP – Attorney General Augmentation**

The Board's Budget change proposal to increase the Attorney General's budget line item is still being reviewed by Department of Finance.

**6. Enforcement Business – (Discussion/Action)**

**a. Enforcement Case Report**

Ms. Nielsen reported as of July 1, 2003 there were 51 new complaints, 23 formal investigations currently pending with Division of Investigation, and 27 open disciplinary cases and 14 open probation cases. The highest percentage by category still remains unprofessional conduct and criminal charges and convictions.

**7. Examination Business – (Discussion/Action)**

**a. January 20, 2004 Licensing Examination**

Ms. Nielsen reported that approximately 600 new candidates have applied for the January 20, 2004 California Acupuncture licensing exam with 300 English, 150 Korean and 100 Mandarin.

**b. Pacific College's Request Regarding Qualifications to sit for the California Acupuncture Licensing Examination**

Tom Haines requested the Board change the language in its current policy regarding the ability of California approved college graduates to sit for the California Acupuncture Licensing Examination, to add: or demonstrate an equivalent curriculum if graduation occurred prior to the 12 month period. Dr. Haines indicated this would allow the approved California doctoral programs to recruit qualified elders from outside California. Mr. Chang suggests that instead of expanding the policies the Board should reflect these policies in regulations.

**8. Education Business - (Discussion/Action)**

**a. China International Medical University, Los Angeles, CA**

Jianfu Jiang, President and Della Welch, Legal Counsel and Chair of the Board of Directors and Bruce Baptee, Clinical Director was present. Ms. Zhong-Fong reported the management agreement between CIMU, and Dr. Jonathan Wu has been terminated and the Board had concerns for CIMU's financial support. Ms. Welch reported that Dr. Wu resigned due to his health condition and was unable to continue with the agreement, and that the school was currently seeking investors to provide CIMU with financial stability. Ms. Jiang stated the school is using personal funds and increasing the student body as part of their funding and as well as looking outside of the country for investors. Ms. Zhong-Fong had concerns that CIMU is in the same position as last year the Board gave CIMU time to correct its concerns and still is at the same point. Don Chang, Legal Counsel suggests the Board authorize the Executive Officer to revisit CIMU for a final report.

**PEI LI ZHONG-FONG MOVED AND SHARI ASPLUND SECONDED THE MOTION TO AUTHORIZE THE EXECUTIVE OFFICER TO PERFORM A SITE VISIT OF CHINA INTERNATIONAL MEDICAL UNIVERSITY TO DETERMINE CURRENT STATUS OF THE SCHOOL, AND IF NECESSARY, START LEGAL PROCEEDINGS TO WITHDRAW CALIFORNIA BOARD APPROVAL OF THE UNIVERSITY. PASSED UNANIMOUSLY**

**b. Acupuncture & Integrative Medicine College, Berkeley (AIMC) (a.k.a.: Meiji) – October 2003 Site Visit**

Ms. Molinar reported at the September 23, 2003 Acupuncture Board meeting, the Board reviewed the submitted documents from AIMC regarding the changes that have taken place. The Board accepted an offer from the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) to participate in an on-site evaluation of AIMC on October 9, 2003 to determine the capability and capacity to provide adequate training. Ms. Molinar stated a copy of AIMC's detailed Change of Control Interim Report submitted to ACAOM was provided for the Board's review. The Board's sites visit provided verification that the school is capable of providing an adequate acupuncture-training program. On October 16, 2003 a letter from the Board was sent to AIMC recognizing the name change from Meiji College to Acupuncture and Integrative Medicine College, Berkeley. Mr. Fennen reported he would be representing AIMC because Ken Klucsor, President was unavailable. He stated the results from ACAOM's hearing will go out soon and BPPVE is scheduling an additional follow up site visit.

**c. Pending School Site Visits**

Ms. Nielsen indicated the school approval process is being reviewed by the Little Hoover Commission as required by law, but the Board is continuing to review schools that have applied to the Board until a decision has been made by the Joint Legislative Sunset Review Committee. Joan Chang volunteered to participate in the next site visit.

**9. Set 2004 Acupuncture Board Meeting Dates and Locations**

The Board selected the 2004 Board meeting dates as follows: February 24, in San Francisco area, June 7 in Monterey Park area, August 9 in Sacramento area and November 1 in Los Angeles/Arcadia area.

**10. Election of Officers for 2004**

Michael Eng nominated Pei Li Zhong-Fong and Shari Asplund as 2004 Co-Chairs to the Acupuncture Board.

**MICHAEL ENG MOVED AND MIN CHANG SECONDED THE MOTION  
TO NOMINATE PEI LI ZHONG-FONG AND SHARI ASPLUND AS THE  
BOARD CO-CHAIRS FOR 2004  
PASSED UNANIMOUSLY**

**11. Public Comment Period:**

Tom Haines, PCOM, commented the Doctoral graduates might have potential difficulties down the road entering a doctoral program in California. There are four programs approved in the United States and two new schools pending review by ACAOM. Dr. Haines suggested the Board address the following issues in the future: (1) applicants with out-of state licenses; (2) doctoral educational courses considered for CEU's; and (3) out-of-state practitioners that need to practice in California while enrolled in an approved doctorate. Schools are impacted with marketing their programs out-of-state. A stand alone doctoral is currently being developed by ACACOM. Brian Fennen, CAOMA, updated the Board on the pending legislative bills. Mr. Fennen stated the Medicare Bill is in jeopardy, the workers compensation bill has been put off, and CAOMA will be writing letters to the Little Hoover Commission concerning Ms. Dower as a participant in the review. Dr. John Chen thanked and applauded the Board for their participation in the Scope of Practice review and their foresight to recognize the importance of the potential herb and prescription medicine interaction reaction. He has co-authored a new book, Chinese Medical Herbology and Pharmacology, addressing this issue.

**12. CLOSED SESSION: Pursuant to Government Code Section 11126 (c) (1) and (c)(3) to discuss/take action on examination administration and disciplinary actions.**

**13. Adjournment**

Acupuncture Board meeting adjourned at approximately 3:40 p.m.